

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on January 16, 2003 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Jim Keane, Vice Chairman (D)
Rep. Donald Steinbeisser, Vice Chairman (R)
Rep. Bob Bergren (D)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Ray Hawk (R)
Rep. Bob Lawson (R)
Rep. Rick Maedje (R)
Rep. Gary Matthews (D)
Rep. Scott Mendenhall (R)
Rep. Penny Morgan (R)
Rep. Allen Rome (R)
Rep. Sandy Weiss (D)
Rep. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 163; HB 164; HJR 9; HB 145

Executive Action: HB 265; HB 296; HB 126 (further
action to be on another day); HB98

HEARING ON HB 163

Sponsor: REP. TIM CALLAHAN, HD 43, Great Falls

Opening Statement by Sponsor:

REP. CALLAHAN, said this bill was simple in terms of structure. The essence begins on line 17 which simply changes "insured" to "disabled worker" in regard to selecting a rehabilitation provider. When a worker is injured, the insured selects a rehabilitation provider for that worker. The change in the bill simply specifies that the injured worker is the person who would select the rehabilitation provider.

{Tape: 1; Side: A; Approx. Time Counter: 47 - 87}

Proponents' Testimony:

Richard Martin, Attorney at Law, Great Falls, said he is speaking in favor of this bill. He supplied written testimony.

EXHIBIT (buh09a01)

{Tape: 1; Side: A; Approx. Time Counter: 89 - 143}

Travis Ahner, Montana Trial Lawyers Association, said Montana needed to give the injured worker, not the insurer, a choice of choosing the vocational rehabilitation provider. The rehabilitation provider must be certified by the Board of Rehabilitation and the certified provider must state that the rehabilitation plan will help the worker. There should be reasonable goals and a reasonable chance for a job. The rehabilitation plan must be agreed upon between the worker and the insurer. The insurer still has much to say in this action.

{Tape: 1; Side: A; Approx. Time Counter: 143 - 190}

Norm Newhall, Attorney at Law, Great Falls, provided written testimony.

EXHIBIT (buh09a02)

{Tape: 1; Side: A; Approx. Time Counter: 190 - 243}

Robert Sauders, Great Falls resident, said he was currently on workers' compensation benefits. He further testified that the vocational rehabilitation facility that the workers' compensation hired has kept him out of the loop from the beginning of his

rehabilitation. He supplied testimony from Intracorp.

EXHIBIT (buh09a03)

{Tape: 1; Side: A; Approx. Time Counter: 243 - 273}

Dean Blackaby, Attorney at Law, Helena, said 90% of his practice is representing workers' compensation claims. In order to have meaningful rehabilitation there needs to be vocational providers who are willing to stand up to the insurers and willing to make a correct call. That increases their credibility and makes the worker feel as if they are being heard.

{Tape: 1; Side: A; Approx. Time Counter: 273 - 340}

Don Judge, Teamsters Local 190, said they appear in support of this bill. This bill is a matter of fairness to workers who are injured. He said he encouraged the passage of this bill for workers to have some say about their choice of rehabilitation providers.

{Tape: 1; Side: A; Approx. Time Counter: 340 - 422}

Opponents' Testimony:

Larry Jones, Liberty Northwest, said they are the largest workers' compensation carrier in Montana. On occasion, an injured worker may return to work without retraining through job placement. The workers' compensation court is there to make sure insurers comply with the rehabilitation statutes. There is a physical impact in this because, from their own experience, sometimes injured workers have unrealistic expectations about rehabilitation. In opposing this bill, he said the system is not broken. The rehabilitation statutes are there to help injured workers under limited circumstances as set forth in the statute. The system is working.

{Tape: 1; Side: A; Approx. Time Counter: 422 - Tape: 1; Side B; Approx. Time Counter: 58}

Oliver Goe, Attorney at Law, Montana Municipal Insurance Authority, said that irrespective of this bill, insurers will still be required to hire vocational rehabilitation consultants in situations where workers have a disability and do not return to the type of employment they previously held.

{Tape: 1; Side: B; Approx. Time Counter: 59 - 78}

George Wood, Executive Secretary, Montana Self Insurers Association, said his organization opposes this bill.

{Tape: 1; Side: B; Approx. Time Counter: 79 - 83}

Jacqueline Lenmark, American Insurance Association, said they rise in opposition to this bill. She also said she would like the committee not to be misdirected by the testimony of past proponents and the references to the State Fund. The State Fund is not the only workers' compensation insurer working in Montana.
{Tape: 1; Side: B; Approx. Time Counter: 84 - 102}

Nancy Butler, Montana State Fund, said she would echo the comments of the other opponents. The insurer is to pay for the fees and charges of the vocational rehabilitation consultant. That does not change under this bill. There is not a real sense of urgency to make this change.
{Tape: 1; Side: B; Approx. Time Counter: 103 - 124}

Sue Weingartner, Alliance of American Insurers, said, for the reasons stated by the previous opponents, they also oppose the designation of the rehabilitation provider by the injured worker. They believe that early intervention and coordination with the employer is necessary. The insurer loses the ability to intervene early if they cannot designate the provider. The policy of Alliance favors the insurer/employer be given the responsibility of making the initial selection of a rehabilitation provider, with the employee given the right to request a change should the provider be unsatisfactory.
{Tape: 1; Side: B; Approx. Time Counter: 124 - 138}

Informational Testimony:

Diana Ferriter, Bureau Chief, Workers' Compensation Assistance Claims Bureau, Department of Labor & Industry, said she was available for questions of the committee.
{Tape: 1; Side: B; Approx. Time Counter: 141 - 149}

Questions from Committee Members and Responses:

REP. BOOKOUT-REINICKE asked Ms. Weingartner why the insurance company would lose the ability to intervene with the provider. **Ms. Weingartner** said she believed the insurers are often more familiar with the rehabilitation providers and have more expertise.
{Tape: 1; Side: B; Approx. Time Counter: 150 - 189}

REP. MORGAN asked **Ms. Butler** about the consequences of a worker not wanting the vocational rehabilitation provider that the insurer prefers. "Does the worker have the option to choose someone else?" she asked. Ms. Butler said it would be an improvement over the bill currently proposed as far as the

insurer being able to address the issue. **REP. MORGAN** said if that language were in the bill, it would achieve the same goal as if this were changed so the worker has the option to choose who they were interested in. **Ms. Butler** said the worker also has the opportunity to not agree to the plan.

{Tape: 1; Side: B; Approx. Time Counter: 169 - 218}

REP. GALLIK asked **Mr. Goe** if litigation ever occurred in these cases and **Mr. Goe** indicated to the affirmative.

{Tape: 1; Side: B; Approx. Time Counter: 218 - 265}

REP. MENDENHALL asked **Ms. Ferriter** if she could provide the number of people across the State who have been employed by insurance companies. **Ms. Ferriter** said she did not have the information. The insurers may contact the rehabilitation providers.

{Tape: 1; Side: B; Approx. Time Counter: 265 - 364}

REP. HAWK questioned **Ms. Butler** about who the vendors were. **Ms. Butler** said she did not have that information with her but would provide the committee with the information.

{Tape: 1; Side: B; Approx. Time Counter: 364 - 414}

REP. KEANE asked **Ms. Butler** if she could provide a list of the rehabilitation providers, the number of cases they handled and the dollar amount they received.

{Tape: 1; Side: B; Approx. Time Counter: 414 - Tape: 2; Side A; Approx. Time Counter: 50}

Closing By Sponsor:

The sponsor closed.

{Tape: 2; Side: A; Approx. Time Counter: 113 - 123}

HEARING ON HB 164

Sponsor: REP. TIM CALLAHAN, HD 43, Great Falls

Opening Statement by Sponsor:

REP. CALLAHAN, said this bill was an act revising certain provisions related to permanent total disability benefits, removing the provisions limiting a worker to a maximum of 10 benefit adjustments and limiting the adjustment percentage increase to 3%. He then explained the changes in the bill.

{Tape: 2; Side: A; Approx. Time Counter: 131 - 165}

Proponents' Testimony:

Jerry Driscoll, Montana AFL-CIO, said totally and permanently disabled workers cannot be substantially and gainfully employed. A permanently disabled worker cannot do any type of employment. It is only fair these workers should receive a cost of living increase on disability benefits each year as long as they live.

{Tape: 2; Side: A; Approx. Time Counter: 165 - 225}

Richard Martin, Great Falls resident, said he was here to speak in favor of this bill. He presented testimony and proposed amendments.

EXHIBIT (buh09a04)

{Tape: 2; Side: A; Approx. Time Counter: 225 - 335}

Travis Ahner, Montana Trial Lawyers Association, said this bill does not do anything for attorneys and simply puts the cap more in tune with the actual costs of living.

{Tape: 2; Side: A; Approx. Time Counter: 335 - 343}

Don Judge, Teamsters Local 190, said they support this measure and feel that people who are injured typically have greater costs; and this bill is just a matter of fairness to those who are disabled.

{Tape: 2; Side: A; Approx. Time Counter: 344 - 358}

Opponents' Testimony: None

Informational Testimony:

George Wood, Executive Secretary, Montana Self Insurers Association, said they do not oppose this bill. Their problem with the bill is in the effective date. It is difficult to determine whether it is prospective or is it an attempt to go retrospective and consequently the cost could be substantially higher.

{Tape: 2; Side: A; Approx. Time Counter: 359 - 368}

Diana Ferriter, Department of Labor & Industry, said she was here to answer questions from the committee.

{Tape: 2; Side: A; Approx. Time Counter: 370 - 391}

Jacqueline Lenmark, American Insurance Association, said they had no position on this bill. They are concerned, however, on the applicability date.

{Tape: 2; Side: A; Approx. Time Counter: 391 - 409}

Larry Jones, Liberty Northwest, said they do not oppose the bill but stand in approval with George Wood's testimony.

{Tape: 2; Side: A; Approx. Time Counter: 410 - 412}

Nancy Butler, State Fund, said the National Council on Compensation Insurance does not support or oppose this bill. They provide the rates in Montana for the private carriers and the State Fund substantially uses those same rates for its customers as well. It takes a number of years for a person to be declared permanently disabled.

{Tape: 2; Side: A; Approx. Time Counter: 412 - 449}

Questions from Committee Members and Responses:

REP. MORGAN questioned Ms. Butler on the fiscal note. Would employers see an increase in their workers' compensation premium. **Ms. Butler** said the increase in the premium would be 2% more a year to compensate for the change.

{Tape: 2; Side: A; Approx. Time Counter: 456 - 487}

REP. BITNEY asked if many persons with permanent and total disability would be able to do any part-time work. **Ms. Ferriter** said they could do some part-time work. **REP. BITNEY** asked if these individuals would have the opportunity to have had private disability insurance supplement if they wanted to which would be in addition to this settlement. **Ms. Ferriter** said some individuals have policies through their employment but she didn't know if that disability would continue if they were determined to be permanently totally disabled.

{Tape: 2; Side: B; Approx. Time Counter: 1 - 16}

REP. KEANE spoke on the effective date.

{Tape: 2; Side: B; Approx. Time Counter: 28 - 60}

Closing By Sponsor:

The sponsor closed.

{Tape: 2; Side: B; Approx. Time Counter: 61 - 96}

HEARING ON HJR 9

Sponsor: **REP. FRANK SMITH, HD 56, Poplar**

Opening Statement by Sponsor:

REP. SMITH, said this resolution requests that Congress investigate ways of dealing with the price of medications in order to make them affordable to everyone.

{Tape: 2; Side: B; Approx. Time Counter: 110 - 135}

Proponents' Testimony:

Betty Whiting, Montana Association of Churches, said this resolution should be passed on behalf of the many people in Montana who are struggling with paying for prescription drugs.

{Tape: 2; Side: B; Approx. Time Counter: 136 - 204}

Brad Martin, Executive Director, Montana Democratic Party, said all of us have heard the heart-rending stories of people who have made real choices between buying prescription drugs to maintain their health or many times, to preserve their life. These have been real choices between buying those prescription drugs and paying their rent, paying their heat, buying food for their family; and it has been a big choice. There are real people behind all of those stories. This resolution presents a real opportunity to work together, it is a step in the right direction.

{Tape: 2; Side: B; Approx. Time Counter: 205 - 231}

Betty Beverly, Executive Director, Montana Senior Citizens Association, said it is starting to be a choice between food, heat and prescription drugs.

{Tape: 2; Side: B; Approx. Time Counter: 231 - 320}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

CHAIRMAN MCKENNEY requested some definitions to the language regarding the term "Montana Legacy Legislature" which Mr. Smith defined as a group of senior citizens. **CHAIRMAN MCKENNEY** also questioned Line 14 regarding the federal government having the control over the cost of medications so the cost could be more

affordable. He also said that he preferred the federal government would participate. The federal cost controls trouble him. He wondered if this terminology could be amended somehow. **Mr. Smith** said that was one of the terms he also did not care for.

{Tape: 2; Side: B; Approx. Time Counter: 329 - 361}

REP. MORGAN questioned the pricing of drugs in state law in Florida. **Mr. Smith** said Florida made a law whereby the senior citizens could buy prescriptions for the same price the state could purchase them.

{Tape: 2; Side: B; Approx. Time Counter: 362 - 390}

REP. MAEDJE said some pharmaceutical companies donate very expensive drugs to people who are under hardship and questioned if a amendment could be considered to recognize that drug companies do follow this. He also discussed the expense of research.

{Tape: 2; Side: B; Approx. Time Counter: 390 - 420}

Closing By Sponsor:

The sponsor closed.

{Tape: 2; Side: B; Approx. Time Counter: 422 - 430}

CHAIRMAN McKENNEY turned the hearing over to **VICE CHAIRMAN STEINBEISSER**.

HEARING ON HB 145

Sponsor: **REP. JOE McKENNEY, HD 49, Great Falls**

Opening Statement by Sponsor:

REP. McKENNEY, said this bill was a request of the Montana State Auditor's Office, and is intended to be a non-controversial bill. The bill is two years in the making. In essence, this bill revised the state insurance code; allowing insurance companies to use book-entry systems with respect to their securities and providing the insurance commissioner with rule making authority.

{Tape: 2; Side: B; Approx. Time Counter: 457 - 485}

Proponents' Testimony:

Jill Gerdrum, State Auditor's Office, explained the changes in the new sections and the revision of the previous sections. She also proposed amendments.

{Tape: 2; Side: B; Approx. Time Counter: 486 - Tape: 3, Side A; Approx. Time Counter 116}

Roger McGlenn, Executive Director, Independent Insurance Agents Association, said they support this legislation. He supplied a proposed amendment to the bill. He then explained the amendment.

EXHIBIT (buh09a05)

{Tape: 3; Side: A; Approx. Time Counter: 117 - 165}

Tonya Ask, Blue Cross/Blue Shield of Montana and Montana Comprehension Health Association, said they were supportive of the bill. They also support the amendment.

{Tape: 3; Side: A; Approx. Time Counter: 166 - 177}

Frank Cote, Health Insurance Association of America, said this bill will make the Montana code better able to enforce and at the same time not have any controversy.

{Tape: 3; Side: A; Approx. Time Counter: 178 - 187}

Jacqueline Lenmark, American Insurance Association and American Counsel of Life Insurers, said this bill was a good process which works well. They support the bill and the amendments.

{Tape: 3; Side: A; Approx. Time Counter: 188 - 200}

John Metropoulos, National Association of Independent Insurers and Farmers Insurance Group, said they supported this bill as amended.

{Tape: 3; Side: A; Approx. Time Counter: 201 - 208}

Greg Van Horssen, State Farm Insurance Company, said this is an important bill. There are important technical changes in this bill.

{Tape: 3; Side: A; Approx. Time Counter: 209 - 228}

Denise Pizzini, US Health Services and Montana Benefits and Health Connection, said they support this bill as amended.

{Tape: 3; Side: A; Approx. Time Counter: 229 - 234}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

VICE-CHAIRMAN STEINBEISSER asked if the department accepted Mr. McGlenn's amendments. **Ms. Gerdum** said they were concerned about the amendment, not because they have trouble with any of the substance but. because section 33-17-511 was not listed in the original bill or the title. She requested time to ask the department if there is concern with this at all. **Mr. Campbell** said there would be no problem.

{Tape: 3; Side: A; Approx. Time Counter: 235 - 269}

Closing By Sponsor:

The sponsor closed.

{Tape: 3; Side: A; Approx. Time Counter: 270 - 279}

Written testimony was also provided by **Greg Van Horssen** in regard to HB 126.

EXHIBIT (buh09a06)

EXECUTIVE ACTION ON HB 265

{Tape: 3; Side: A; Approx. Time Counter: 308 - 490}

Motion: **REP. MATTHEWS** moved **HB 265 DO PASS.**

Discussion:

REP. KEANE said he opposed this legislation.

REP. MATTHEWS indicated that this legislation is something the board should bring forward. He also said he wanted an opinion on the view of the Attorney General. **REP. ROBERTS** said the board has attempted to address this issue but because of the nature of the bill it was brought before the legislature.

REP. STEINBEISSER said he was going to vote for this bill.

REP. KEANE asked if the committee voted against this bill and it was tabled what are the consequences. **CHAIRMAN MCKENNEY** said it would go back to the existing law. It would not change.

Vote: A roll call vote was taken which failed 7-11 with **REPS. STEINBEISSER, BOOKOUT-REINICKE, HAWK, LAWSON, MATTHEWS, MORGAN** and **ROME** voting yes.

Motion/Vote: REP. KEANE moved to TABLE HB 265. A reversal vote from the DO PASS motion was done which passed 11-7 with REPS. STEINBEISSER, BOOKOUT-REINICKE, HAWK, LAWSON, MATTHEWS, MORGAN and ROME voting no.

EXECUTIVE ACTION ON HB 296

{Tape: 2; Side: B; Approx. Time Counter: 481 - 500}

Vote: REP. GALVIN-HALCRO moved HB 296 DO PASS.

Vote: A roll call vote was taken which passed 11-7 with REPS. McKENNEY, STEINBEISSER, BITNEY, HAWK, MATTHEWS, MENDENHALL and ROME voting no.

EXECUTIVE ACTION ON HB 126

{Tape: 3; Side: A; Approx. Time Counter: 20 - 250}

Motion: REP. FRITZ moved HB 126 DO PASS.

Discussion:

REP. MORGAN said she opposes this bill because she feels the money should go to the General Fund.

REP. GALLIK said the Department of Consumer Protection belongs in the Attorney General's Office and not in the Department of Administration. All of these items would not be before us if the Consumer Protection Office was a part of the Attorney General's Office, he said. He is supporting the bill.

Mr. Campbell said there would be an amount going into the Special Revenue account for the department's use.

CHAIRMAN McKENNEY said REP. MENDENHALL probably has it right.

Motion: REP. MENDENHALL moved the proposed conceptual HB 126 AMENDMENT.

Discussion:

Mr. Campbell said he would not be comfortable doing this amendment until further discussion with Mr. Petesch on this

matter. One of the reasons for his discomfort is that language may be in HB 2 in Appropriations, and this committee cannot amend HB 2.

REP. MENDENHALL withdrew the motion.

Further action will be taken on this bill at a later date.

CHAIRMAN MCKENNEY requested **REP. STEINBEISSER** chair the committee.

EXECUTIVE ACTION ON HB 98

Motion: **REP. MCKENNEY** moved **HB 98 DO PASS.**

Motion: **REP. BITNEY** moved **HB 98 AMENDMENTS (19802)**

Discussion:

REP. BITNEY said the definition of an examination was continuing education and it deals with internet or downloading of computer-based examinations where the student is not physically present. There can be several different categories or types of examination. What the department wants with the specified performance levels is that in order to be granted credit for this continuing education, the applicant taking the test must perform at a minimum level, currently 90%. A person can take the continuing education class in a class setting, where there are no required testing standards. If the course is taken over the internet, the person must pass a series of quizzes or tests. If they fail to get that, they must review the material until they pass. Once they receive that competency level they are granted credit for completion for that course.

Vote: A roll call vote was taken on **HB 98 AMENDMENTS DO PASS.**

Motion carried 18-0.

Motion/Vote: **REP. BITNEY** moved **HB 98 DO PASS AS AMENDED.** A roll call vote was taken on **HB 98 DO PASS AS AMENDED.** Motion carried 18-0.

ADJOURNMENT

Adjournment: 11:45 A.M.

REP. JOE MCKENNEY, Chairman

ALBERTA STRACHAN, Secretary

JM/AS

EXHIBIT (buh09aad)